

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELBERT WELCH,

Petitioner,

v.

ORDER
04-CV-205S

ARTUS, Superintendent of Clinton Correctional Facility,

Respondent.

1. On March 29, 2004, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254. On August 29, 2006, Petitioner filed a Motion for Enlargement on Recognizance or Bail. (Docket No. 19.)

2. On December 5, 2006, this Court referred this matter to the Honorable Victor E. Bianchini, United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a Report and Recommendation containing findings of fact, conclusions of law and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation filed on January 23, 2007, Judge Bianchini recommended that Petitioner's Petition for a Writ of Habeas Corpus be denied and that his Motion for Enlargement on Recognizance or Bail be denied. On February 9, 2007, Petitioner filed timely Objections to Judge Bianchini's Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3), and also filed an Addendum and Supplement to his Objections, with exhibits. Respondent was afforded the

opportunity to oppose Petitioner's objections, but did not do so. Nevertheless, on March 14, 2007, Petitioner filed a Reply in further support of his objections, with additional exhibits. On March 5, 2007, Petitioner moved to supplement the record with additional exhibits, and for other relief. Petitioner's motion was granted to the extent that he sought to supplement his objections to the Report and Recommendation with the additional, attached exhibits.

4. This Court has thoroughly reviewed Judge Bianchini's Report and Recommendation, Plaintiff's Objections, Addendum Objections, Reply and Supplemental Exhibits, and the applicable law. Upon due consideration, this Court finds no legal or factual¹ error in Judge Bianchini's Report and Recommendation. Accordingly, Petitioner's Objections are denied and this Court will accept Judge Bianchini's Report and Recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge Bianchini's January 23, 2007 Report and Recommendation (Docket No. 22) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Objections (Docket No. 23), Addendum Objections (Docket No. 25) and Reply Objections (Docket No. 31) are DENIED.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 1) is DENIED for the reasons set forth in the Report and Recommendation.

¹ The sole finding that may be open to some legitimate dispute is whether Mr. Sansone was Petitioner's second or third appointed attorney in the underlying criminal cases. Judge Bianchini determined that Mr. Sansone was Petitioner's third attorney. The transcript can be read equally to suggest that he was the second or the third. Because this fact has absolutely no bearing on the analysis employed or the outcome of the petition, the Report and Recommendation is accepted without modification.

FURTHER, that Petitioner's motion for bail (Docket No. 19) is DENIED for the reasons set forth in the Report and Recommendation.

FURTHER, that because the issues raised in the petition and motion for bail are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: March 26, 2007
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge